

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. 2:07-cr-307-MEF
)	(WO)
EARNEST D. BATTLE)	

ORDER

On July 14, 2008, the government filed an Unopposed Motion to Continue Trial (Doc. #33), and on July 16, 2008, the defendant filed a Motion to Continue Trial (Doc. #35). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), the court is, of course, limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Speedy Trial Act provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such matter. 18 U.S.C. §3161(c)(1). *See United States v. Vasser*, 916 F.2d 624 (11th Cir. 1990).

The Act excludes from this 70 day period any continuance that the judge grants "on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(8)(A).

The defendant's motion states that a key defense witness will be unavailable for trial. Counsel for the defendant and the government do not oppose a continuance. Consequently, the court concludes that a continuance of this case is warranted and that the ends of justice

served by continuing this case outweighs the best interest of the public and the defendant in a speedy trial. *See United States v. Davenport*, 935 F.2d 1223, 1235 (11th Cir. 1991)(reasonable time necessary for effective preparation is a significant factor for granting a continuance under the Speedy Trial Act).

Accordingly, it is hereby ORDERED:

1. That the defendant's motion filed on July 16, 2008 is GRANTED;
2. That the government's motion filed on July 14, 2008 is DENIED as moot;
3. That the trial of this case is continued from the July 28, 2008 trial term to the October 20, 2008 trial term in Montgomery, Alabama.
4. That the Magistrate Judge conduct a pretrial conference prior to the October 20, 2008 trial term.

DONE this the 16th day of July, 2008.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE